

*Clerk's Note: This Resolution is superseded by Resolution No.: 16-1105.*

Resolution No.:	16-1090
Introduced:	July 28, 2009
Adopted:	July 28, 2009

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
IN MONTGOMERY COUNTY**

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By: County Council

**SUBJECT:** APPLICATION No. DPA 09-1 FOR AMENDMENT TO THE DEVELOPMENT PLAN  
APPROVED IN LOCAL MAP AMENDMENT APPLICATIONS G-813 and G-814,  
Barbara A. Sears, Esquire, Attorney for Applicants Fairland Development, LLC and  
Fairland Development II, LLC, OPINION AND RESOLUTION ON APPLICATION

G-813 Tax Account Nos.: P258-05-01751828; P340, 05-02101492; P454, 05-01751830, P202, 05-15022004; P125, 05-03209161; P181, 05-02309868; P303, 05-03229534; N700, 05-00270246; N300, 05-01705228; N581, 05-00270235; P440, 05-01705217; P75, 05-00262406; P700, 05-00274095. G-814 Tax Account No.: 05-01700636

**OPINION**

The present application, filed on July 16, 2008 by Fairland Development, LLC and Fairland Development II, LLC (together, the "Applicant"), requests approval for an amendment to the Development Plan that was approved in LMA applications G-813 and G-814 in April 2004. G-813 and G-814 were considered in a single proceeding because they related to a single proposed development. Two separate reclassification requests were filed because the combined property is bisected by property owned by PEPCO, which is not part of the proposed development. The combined subject property consists of a total of 313.94 acres of land along the border between Montgomery County and Prince George's County, south of MD 198 and east and north of Greencastle Road in the 5th Election District, owned in part by the Applicant and in part by the Maryland-National Capital Park & Planning Commission ("MNCPPC"). The entire subject property was rezoned to the PD-2 Zone in 2004, in conjunction with a development plan approved by the District Council that provided for the construction of up to 396 homes, mostly single-family detached, around a new, 18-hole golf course, replacing an existing public facility, Gunpowder Golf Course.

The proposed development plan amendment would separate the publicly and privately owned land by creating three amended development plans: (1) G-813 Part I and G-814, (2) G-813 Part II and

(3) G-813 Part III. G-813 Part I and G-814 would provide for the construction of a single-family residential community with up to 365 single-family dwellings, including up to 46 MPDUs, as well as the dedication of an 11-acre school site (with grading, forest conservation and stormwater management provided by the Applicant) and 23 acres of park land. G-813 Part II and G-813 Part III would provide for the continued use of the publicly-owned parts of the subject site as parkland.

The application anticipates the possibility that the MNCPPC may acquire approximately 53 acres of the privately-owned part of the subject site under the County's Legacy Open Space program. The Montgomery County Planning Board ("Planning Board") approved such a purchase on May 28, 2009, and the District Council approved the expenditure of funds for this purpose on July 14, 2009.<sup>1</sup> If the sale is consummated, the 53 acres purchased will be used as open space or parkland, and the number of homes proposed for the residential project will decrease to 248. The street network shown on the plans would still function for a smaller project, with some adjustments.

The Hearing Examiner recommended approval of the application on the basis that the submitted Development Plans would comply with the purposes of the PD Zone, would be substantially consistent with the applicable master plan and would be compatible with existing and proposed uses in the surrounding area. The Planning Board and its Technical Staff provided similar recommendations. The District Council agrees with these conclusions, as discussed below, and incorporates herein the Hearing Examiner's Report and Recommendation dated July 9, 2009.

#### **A. Subject Property**

The 314-acre subject property stretches along the county line from MD 198 in the north to Greencastle Road in the south, with an irregular shape and varying width. The property has approximately 1,370 feet of frontage on MD 198, widens to approximately 2,500 feet in the middle, then narrows down to a single point less than an inch wide at its southern end, about 400 feet north of Greencastle Road. The property is bisected near its northern end by PEPCO transmission lines.

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<sup>1</sup> The District Council takes official notice of Council Resolution No. 16-1046, adopted July 14, 2009.

The portion of the subject property northeast of the PEPCO transmission lines, which was the subject of Case No. G-814, contains 18 acres of land. It is undeveloped, containing woods and wetlands. To the east, in Prince George's County, are industrial uses and storage lots.

The portion of the subject property southwest of the PEPCO transmission lines was the subject of Case No. G-813 and contains the bulk of the property, 295.94 acres of land. It has approximately 100 feet of frontage on MD 198 to the north, and is bounded by the PEPCO power lines and the county line to the east. A stream described as the McKnew Tributary to the Little Paint Branch runs through the G-813 property, parallel to the county line.

The southern part of the G-813 property is in public ownership as part of Fairland Recreational Park. The portion of Fairland Recreational Park within the subject property consists of the Gunpowder Golf Course and a wooded area that has been called the "southern spike" because it is roughly triangular and ends in a sharp point. The Gunpowder Golf Course extends across the county line and is accessed via Old Gunpowder Road, in Prince George's County. A stream known as the Silverwood Tributary to the Little Paint Branch runs through the golf course and converges with the McKnew Tributary. The combined streams then flow south, through the southern spike, to join the Little Paint Branch main stem. Areas of Fairland Recreational Park to the west, outside the subject property, contain additional forested area plus active recreation areas (ball fields, tennis courts and basketball courts) along Greencastle Road. To the east, the southern spike abuts active recreation areas of Fairland Regional Park in Prince George's County. The development plan amendment proposed in this application shows no changes to any of the publicly owned land on the subject property, which would remain as parkland.

The Applicant owns nearly all of the G-813 property located north/east of Gunpowder Golf Course (approximately 165 acres), except for one small area owned by MNCPPC. Portions of this privately owned land have been mined for sand and gravel, resulting in an assortment of cleared areas. An area in about the middle of the privately owned property was used as an illegal landfill (the "stump dump") for many years. The Applicant purchased this land in 2006, after MNCPPC indicated that the County would not be purchasing it due to the cost of the required clean-up. The Applicant has since

entered into a consent agreement with the Maryland Department of the Environment to reclaim part of the land for development (to be the site of a swimming pool and community center) and cover the remainder with a cap and clean fill, for use as open space. The site has been fenced off to prevent further illegal dumping, and all surface trash and debris has been cleared.

The remainder of the G-813 property consists primarily of open space, with a large area of high priority forest surrounding the McKnew Tributary as it enters the subject property. The northern part of the privately owned land abuts residential subdivisions, McKnew Local Park and forest to the west. To the east, it abuts a cluster of industrial uses in Prince George's County, as well as undeveloped Prince George's County land that is planned as the site of approximately 148 homes connected to the residential community proposed in this application, if approved by Prince George's County.

### **B. Surrounding Area and Zoning History**

The surrounding area for this application consists of the area referred to in the 1997 Approved and Adopted Fairland Master Plan as the "Oakfair/Saddle Creek" community, which extends from MD 198 on the north to and including Fairland Park to the south, and from the County line on the east to the Silverwood Tributary on the west. The subject property constitutes about half of the land area within the surrounding area as defined. The remainder of the surrounding area contains a mix of residential uses in the R-200 and R-200/TDR Zones, as well as McKnew Local Park.

The subject property was classified under the R-A Zone (now RE-2, two-acre single-family) in the 1958 Countywide Comprehensive Zoning. The property was reclassified under the R-200 Zone in parts, via sectional map amendments enacted in 1982, 1987 and 1997. Parts of the property were the subject of three unsuccessful local map amendment applications in 1964, 1989 and 1991. The entire subject property was reclassified under the PD-2 Zone in 2004, via LMA Cases G-813 and G-814.

### **C. Proposed Development**

The Applicant seeks to develop the subject property with up to 365 single-family homes, consisting of approximately 319 detached homes and 46 MPDUs in the form of duplexes and/or townhouses. The Applicant has made a binding commitment to dedicate by deed approximately 11

acres of land as a school site (with grading, stormwater management and forest conservation provided by the Applicant) and approximately 23 acres of land as parkland. Required road right-of-way dedications would occupy another 19 acres. The Amended Land Use Plan (the main component of the proposed amended Development Plans), also shows residential amenities including a clubhouse, a swimming pool, open space areas, and trails linking homes within the development to one another, to adjoining residential neighborhoods and to the trail system in adjacent Fairland Recreational Park.

The proposed homes would fall into two neighborhoods, one located at the north end of the site, including the G-814 property and the portion of the G-813 property north of McKnew Local Park, and the other at the south end of the site, abutting Gunpowder Golf Course and the Saddle Creek residential neighborhood. If the proposed land sale to the MNCPPC is consummated, the northern neighborhood will be eliminated and that land will become parkland. This would reduce the maximum number of homes to 248, including up to 31 MPDUs. The school site and parkland dedications would be unchanged, per the written binding elements of the Amended Land Use Plan.

The northern neighborhood would have its sole vehicular access from Route 198. It would be connected to the southern neighborhood via a pedestrian trail only. The southern neighborhood would have two points of vehicular access in Montgomery County, from Saddle Creek Drive and Cedar Tree Drive. The extension of Cedar Tree Drive would connect to Saddle Creek Drive, which would then flow through the development. If the residential development that the Applicant proposes on the Prince George's County side of the line is approved, the Applicant hopes to continue Saddle Creek Drive into Prince George's County, connecting to Old Gunpowder Road. If that development is not approved, Saddle Creek Drive is planned to end in a cul de sac at the county line.

#### **D. Development Plan**

The proposed Development Plans include each of the elements required under Code § 59-D-1.3, including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not public ownership. The

Development Plans, and the Amended Land Use Plan that constitutes one of their primary elements, are binding on the Applicant except where particular elements are identified as illustrative or conceptual. The Development Plans are subject to site plan review by the Planning Board, and minor changes may be made at that time. The principal specifications on the Development Plans – those that the District Council considers in evaluating compatibility and compliance with the zone, for example – may not be changed without further application to the Council to amend the Development Plans.

The present application has complied with the requirements for a development plan through a single set of documents covering the entire subject property. The principal component of the three Development Plans proposed here is the Amended Land Use Plan, Exhibit 82(a). Additional components include the NRI/FSD (Exhibits 34 (s) – (v)) , vicinity maps (e.g. Exs. 6, 13, 25, 34(l) and 34(m)) and a phasing plan (Ex. 82(b)).

The Applicant proposes, with the consent of MNCPPC, to divide the subject property into three amended Development Plans: (1) G-813 Part I and G-814; (2) G-813 Part II and (3) G-813 Part III. G-813 Part I and G-814 would provide for the construction of the proposed residential community, including the school and parkland dedications. G-813 Part II and G-813 Part III would provide for the continued use of the publicly-owned parts of the subject site as parkland.

The Amended Land Use Plan divides the subject property north of Gunpowder Golf Course into use areas: residential, common open space, school dedication, park dedication and community recreation areas. Its text specifies that minor adjustments may be made at site plan to “the limits and extents of geographic areas and amenities areas defined by the legend and depicted hereon.” Thus, the general site layout and locations of land uses may be considered binding elements of the amended Development Plans, but minor changes can be expected at site plan. The Amended Land Use Plan similarly specifies that land areas devoted to public use and green area are approximate and subject to change at site plan, provided that the minimum green area must be 45 percent, a one-third increase over the minimum 30 percent required by the PD Zone.

The Amended Land Use Plan contains three sets of written binding elements: one for G-813 Part I, one for G-814 and one addressing the possible sale of part of the subject property to MNCPPC. These binding elements are reproduced below and on the next page.

FAIRLAND PARK COMMUNITY  
LOCAL MAP AMENDMENT APPLICATION G-813 PART I  
WRITTEN BINDING ELEMENTS

1. The maximum number of dwelling units will be 353 units, including a maximum of 46 Moderately Priced Dwelling Units (MPDUs). The MPDU requirement for G-813, Part I and G-814 will be satisfied within the boundaries of G-813, Part I. The final number of dwelling units for G-813, Part I and G-814, including 12.5% MPDUs, will be established during site plan review.
2. The MPDUs will consist of townhouse and duplex units. If the number of dwelling units is reduced at site plan, the MPDU unit types (townhouses and duplexes) will be proportionally adjusted downward. Final location and siting of MPDUs will be established during site plan review; however no more than 16 units will be provided in one location.
3. Forest conservation requirements will be satisfied within the boundaries of G-813 Part I and G-814 by the retention of the existing forest. The Applicant must consider G-813 Part I and G-814 as one overall project for the forest conservation plan unless the Planning Board approves modifications to the forest conservation plan.
4. The trails shown on this plan are illustrative only. The trail system and locations will be established during site plan review.
5. The minimum required green area will be increased from 30% to 45%. As used in this Binding Element, green area is gross tract area less the roads, buildings and driveways.
6. The Elementary School site shall be dedicated to public use prior to recordation of final plats for residential lots in Phase II, to also include grading, Forest Conservation and Stormwater Management (SWM) as required.
7. No building other than a single-family detached residence shall be constructed within 100 feet of any boundary of the property comprising G-813 Part I, which adjoins land for which the area master plan recommends a one-family detached zone.

FAIRLAND PARK COMMUNITY  
LOCAL MAP AMENDMENT APPLICATION G-814  
WRITTEN BINDING ELEMENTS

1. The maximum number of dwelling units will be 12 units.
2. Forest conservation requirements will be satisfied within the boundaries of G-813 Part I and G-814 by the retention of the existing forest. The Applicant must consider G-813 Part I and G-814 as one overall project for the forest conservation plan unless the Planning Board approves modifications to the forest conservation plan.
3. The trails shown on this plan are illustrative only. The trail system and location will be established during site plan review.
4. The minimum required green area will be increased from 30% to 45%. As used in this Binding Element, green area is gross tract area less the roads, buildings and driveways.

PROJECT OPEN SPACE ACQUISITION BY MARYLAND-  
NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
(WRITTEN BINDING ELEMENT)

If the Northern Portion, hatched area (consisting of approximately 52.88 acres and proposed for the site of 117 units in the northern portion of G-813 Part I and all of G-814) is acquired by the Maryland-National Capital Park and Planning Commission, then (a) the land use designation of this area shall be "Public Parkland" and (b) the maximum number of dwelling units in the Southern Portion of G-813 Part I will be 248 units, including a maximum of 31 MPDU's. The final number of dwelling units, including 12.5% MPDU's, will be established during site plan review. All other commitments in the written binding elements set out above, including the school dedication, shall remain unchanged. If necessary, forest conservation and other easements or restrictions shall be permitted to be placed on the Northern Portion to satisfy the requirements of this Development Plan Amendment or any subsequent amendment to the Preliminary Plan and Site Plan for Fairland Park Community, including those requirements pertaining to tree preservation, stream buffers, trails, utilities, and State Highway Administration dedication.

The proposed residential development would be built in three phases, starting with the property abutting Gunpowder Golf Course. The school site is to be prepared and dedicated before the final plat is recorded in Phase II. If the potential property sale to MNCPPC takes place, those 53 acres will not be part of the phasing plan, but the park dedication will remain in Phase III.



### **E. Master Plan**

The subject property falls within the area covered by the 1997 Approved and Adopted Fairland Master Plan (the "Master Plan"), which divided the planning area into geographically defined communities. The subject property corresponds very closely to Area 2 of the Oakfair/Saddle Creek Community as defined in the Master Plan. The Master Plan recommended development of a golf course community in Area 2, under the PD Zone, to achieve "an appropriate mix and size of [residential] units, an improved golf course design located outside the stream valley, and protection of other environmental features such as steep slopes and wooded areas." The Master Plan recommended development of Area 2 under a private/public partnership, and noted that the PD Zone would permit a high level of scrutiny and promote compatibility between the golf course community and the existing neighborhood.

The Master Plan listed several elements to be evaluated at the time of a PD zoning request:

- A density cap of 510 units overall, with 396 units in Montgomery County and an appropriate mix of housing types including single-family detached homes and attached units;
- MDPUs to be distributed throughout the development;
- Extension of the existing road network (see . . . page 93) ;
- Areas of no disturbance or environmental impact (see page 119);
- Non-vehicular access to Fairland Recreational Park;
- Connect road(s) to Old Gunpowder Road in Prince George's County, if desirable;
- Common open space for residents of the new community; and
- A 12-15 acre site for a public elementary school.

The transportation section of the plan specified that Cedar Tree Drive should be extended to Old Gunpowder Road to provide access for the new community and the golf course, and an alternative access point for existing neighborhoods that are currently served only by MD 198. It also emphasized the value of preserving the stream valley between McKnew Local Park and Fairland Recreational Park, which contains a very diverse and unusual plant community. As described more fully in the development

plan findings below, the District Council agrees with the Hearing Examiner, the Planning Board and Technical Staff that the proposed Development Plans would be in substantial compliance with the recommendations and objectives of the Master Plan.

#### **F. Environmental Impacts**

The subject property contains 133 acres of forest, all designated high-priority and identified for protection in the Master Plan, which has a goal of achieving the maximum contiguous high-priority forest. As noted by MNCPPC Environmental Planning Staff, achieving the Master Plan's goals for residential development necessarily results in significant loss of natural resources, principally high priority forest and stream buffer areas. The current plan would remove 74 acres of high-priority forest, 25 acres less than the 99 acres that the original plan would have removed. Under Chapter 22A of the Montgomery County Code, the proposed development is subject to a forest conservation threshold of 20 percent of the site, or 36.13 acres, and an afforestation requirement equal to 15 percent of the site, or 18.46 acres. *See id.* The preliminary forest conservation plan, which has been approved by the Planning Board, satisfies these requirements by preserving 57.78 acres of forest on site, approximately 9.5 percent more than the legal minimum. In addition, the Applicant has committed to dedicate an additional 23 acres of forest as parkland. The configuration of the forest retention and parkland dedication would provide larger areas of contiguous forest than the numbers suggest, because they would connect to forest in McKnew Local Park and on property that MNCPPC already owns, identified in this application as G-813 Part II. The District Council agrees with Environmental Staff's conclusion that "the amount and configuration of retained forest shown on the preliminary forest conservation plan meets all the priorities of the forest conservation law, including saving large areas of contiguous forests, and the objective of the master plan to protect the very diverse and unusual plan community." *See Staff Report at circle 25-26.*

The evidence suggests that the potential acquisition of part of the site by the MNCPPC as Legacy Open Space would only improve the proposed Development Plans from an environmental perspective, by protecting important natural resource areas including old-growth upland forest, unique biodiversity and diverse geologic and soil conditions.

In keeping with the Master Plan's objective of restoring the degraded portion of the lower McKnew Tributary, the Applicant has taken responsibility for stabilizing the degraded areas under its control, to prevent further degradation.

The Planning Board's Environmental Guidelines require all lots in a PD Zone to be located outside environmentally sensitive areas. In general, the proposed development would result in only minor encroachments and disturbances to wetlands, streams, stream valley buffers and high priority forest. As currently configured, however, the proposed project would require filling three small pockets of wetlands in the southern neighborhood (the only remaining neighborhood if the potential MNCPPC purchases goes forward) that are located entirely or partially within approximately eleven of the lots shown. The question of whether these wetlands will be filled and new wetlands created to replace them will be resolved at a later stage of review.

The Applicant identified the following environmental benefits of the proposed plan, compared to the 2004 plan (*see* Ex. 54(b)):

- Reduction in the number of dwelling units from 396 to 365.
- Reduction in stream buffer encroachment by 26.5 acres.
- Enlargement of McKnew Park from 22.5 acres to approximately 60 acres by dedicating 23 acres of upland forest and providing a connection to 14.5 acres of public parkland already owned by the MNCPPC, identified in this application as G-813 Part II.
- Retention of the above-mentioned 14.5 acres of parkland, which previously were shown as part of the new golf course.
- Reduction in tree removal on the overall site by 26.6 acres.
- Reduction in tree removal within the stream buffer area by 9.55 acres.
- Remediation of stump dump property by the Applicant.
- Reduction in number of stormwater management ponds from 22 to eight.
- Elimination of 26,762 square feet of forested wetland conversion (the removal of trees from a wetland).

- Reducing road crossings over a stream channel from two to one by realigning the extension of Cedar Tree Drive.

The Applicant plans to install a stormwater management system using wetland bottom ponds for both water quality and channel protection. The Applicant plans to use stormwater credits where possible, including natural area conservation, disconnecting rooftop runoff and non-rooftop runoff, sheet flow to buffers and environmentally sensitive development. The Department of Permitting Services ("DPS") has approved a concept stormwater management plan for the subject site, but this plan did not include the school site because its location had not been determined. The Applicant's civil engineer testified that a new concept plan has been submitted to DPS with the school site included. He opined that the plan complies with all relevant county and state requirements, and he expects it to be approved.

Community member Audrey Binder, representing the Greencastle Lakes Community Association, argued that any development of the subject site would cause a loss of forest, vegetation, canopy cover and pervious surfaces, and the entire property should be permanently protected as open space. The question before the District Council in this case is not whether any development at all should be permitted on the subject site, but whether the Applicant's plan would satisfy applicable legal standards. As discussed in detail below, the District Council concludes that applicable legal standards have been met.

## **G. Public Facilities and other Public Interest Issues**

### **1. Transportation**

The Planning Board approved a preliminary plan of subdivision for the proposed project in 2004, as well as a site plan.<sup>2</sup> Its approval of the preliminary plan necessarily included a finding under the County's Adequate Public Facilities Ordinance ("APF," Code §50-35(k)) that public facilities including transportation, schools, water and sewage facilities, and police, fire and health services would be adequate to support the proposed development. MNCPPC Transportation Planning Staff reports that the APF finding remains valid, and that as a matter of policy, Development Review Division Staff will

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<sup>2</sup> Preliminary Plan No. 1-05020 and Site Plan No. 8-05006.

permit the Applicant to file for an amendment of its preliminary plan if the present application is approved, which will maintain the original APF validity. The Transportation Planning Division “considers a development to maintain its APF validity and requires no further LATR/PAMR study as long as any amendment to the development will not exceed the prior APF approval trip generation ceiling.” Ex. 70. In this case, the reduced number of units would generate a lower number of trips than the total considered during the APF review, so Technical Staff did not require any traffic analysis to support the present application.

The District Council finds that the continuing validity of the Planning Board’s APF finding, paired with the fact that the proposed 365-unit or 248-unit development can be expected to generate fewer trips than a 396-unit development, is persuasive evidence to support a finding that the proposed development plan amendment would not have any adverse impacts on traffic conditions in the area. The Council need not reach the question of whether it is possible for substantial, probative evidence to be introduced in a development plan amendment case that would outweigh the continued validity of a Planning Board APF finding, because no such evidence has been presented here. Representatives of the Greencastle Lakes Community Association argued that local roads are very congested and cannot handle any additional traffic, but they presented only anecdotal evidence, which the District Council does not consider sufficient to outweigh the Planning Board’s APF finding. Moreover, the Applicant’s traffic expert testified that the proposed development would not overburden local transportation facilities. He stated that with the exception of Route 29, local roadways are operating at very acceptable levels of service. He acknowledged that Route 29 is congested, but argued that the Inter-County Connector, when completed, will provide alternatives for drivers using Route 29 to get to I-495, and that if the proposed project extends into Prince George’s County, extending Saddle Creek Drive to Old Gunpowder Road will give local drivers an alternative to Route 29.

## **2. Schools**

The subject property is located within the Burtonsville Elementary School and Banneker Middle School service areas, and is in the Paint Branch “base area” of the Northeast Consortium, which is made

up of Blake, Paint Branch and Springbook high schools. Technical Staff estimates that the proposed 365 homes would generate approximately 97 elementary, 43 middle and 48 high school students. Enrollment at Burtonsville Elementary School is currently over capacity and projected to remain over capacity for the six-year forecast period. Enrollment at Banneker Middle School is currently within capacity and projected to remain within capacity for the forecast period. Paint Branch high school is expected to remain over capacity for the forecast period, despite a modernization and expansion scheduled for completion in August 2012.

Montgomery County Public Schools ("MCPS") supports the proposed development on grounds that it "serves the public interest by generously offering a dedicated elementary school site at no cost to county taxpayers." See letter from Joseph J. Lavorgna, Acting Director, MCPS, Staff Report circle 41. Technical Staff notes that the school site dedication represents more in mitigation than the burden represented by the number of students the project would generate.

The Greencastle Lakes Community Association argued that donating a school site is an inadequate contribution to easing the strain that the proposed development would place on local schools, because there is no real assurance that a school will be built on the site and no definite plan for the timing of construction.

The District Council accords more weight to the opinion of MCPS than to Greencastle Lakes' assertions. While the proposed development would add children to each of the local public schools, the number of students expected is far from enough to independently generate a need for a new school. Moreover, while it is true that dedication of a school site does not guarantee that a school will be built, it makes such construction significantly more likely, and reduces the cost to the County.

The Planning Board's school capacity finding for Fiscal Year 2010 under the Growth Policy indicates that the Paint Branch Cluster is at 106 percent of capacity at the elementary level, 97 percent at the middle school level and 103 percent at the high school level. Accordingly, new subdivision approvals in this cluster during FY 2010 will require a school facility payment. In the District Council's view, the level of overcrowding in local schools does not justify denial of the present application,

particularly in light of the significant contribution to MCPS represented by the school site dedication and the project's still-valid APF finding from the Planning Board, which covers schools as well as roads.

### **3. Other Public Facilities**

The Greencastle Lakes Community Association argued that their neighborhood suffers from inadequate police protection, and cannot accommodate more homes. The association declared that it has had to hire private law enforcement at a cost of about \$60,000 per year to supplement the county police, and that when they asked for more police protection, they were told there was no more money in the budget.

The Growth Policy specifies that police and fire protection are to be considered adequate to serve a proposed subdivision unless there is evidence to the contrary. In the event of such evidence, the Planning Board is directed to seek a written opinion from the relevant agency. A formal inquiry is not called for in the present circumstance, given the anecdotal nature of the evidence suggesting inadequate police services and the still-valid APF finding for this development by the Planning Board. Nonetheless, the Applicant undertook to seek input from the police department at the Hearing Examiner's request.

The Applicant obtained a signed email from Commander Donald Johnson, Montgomery County Police 3d District, who disagreed with the contention that the police department is inadequately staffed in the Fairland area. He stated that the area "is staffed in accordance with population and crime problems." Ex. 73. Commander Johnson noted that a new 3d District Police Station is planned at the intersection of New Hampshire Avenue and Route 29, to be completed in 24 to 30 months. The Applicant submitted the relevant page from the County CIP, which shows a new, 24-hour, seven-days-a week 3d District Police Station funded for land acquisition and planning/design as of June 3, 2008. See Ex. 74. Commander Johnson did not take a position on the proposed development, but stated that while he would always welcome more officers, that does not mean the department is understaffed.

The fact that the Greencastle Lakes Community Association has found it necessary to hire private security guards tends to suggest an inadequate police presence in that neighborhood (or a community with a particularly strong concern about security issues). In the District Council's view, this

evidence is outweighed by Commander Johnson's conclusion that the Fairland area is not understaffed, together with the evidence that a new district station is in the planning stage and the Planning Board's still-valid APF finding.

The Greencastle Lakes Community Association maintained that local fire protection services would not be adequate to accommodate the proposed development, because the Burtonsville Fire Station is one of the busiest stations in the County. The Applicant obtained a letter from Michael T. Hamilton, Battalion Chief, Montgomery County Fire and Rescue Services, stating that fire and rescue coverage in the Fairland area is adequate to accommodate the proposed development. *See Ex. 72.* Chief Hamilton acknowledged that the Burtonsville Station is busy, but stated that it is not too busy to cover the increased call load. He also stated that there are two other stations not far away in Prince George's and Howard Counties, noting that the three counties participate in a mutual aid agreement, and units are routinely dispatched into Montgomery County from Prince George's and Howard to provide emergency services. *See id.* The District Council concludes that the unsupported contention that fire services are inadequate to serve the proposed development is overwhelmingly outweighed by Chief Hamilton's letter and the Planning Board's still-valid APF finding.

There has been no contention that utilities are not adequate to support the proposed development. The Applicant confirmed that all necessary utilities exist within the subject property or on external roads, and that WSSC has indicated water and sewer are adequate to support the proposed development.

#### **H. Nearby Historic Property**

A historic home known as the Burton Log House has been identified just outside the subject property, at 15107 Birmingham Drive. The home is listed on the State Historic Sites Inventory Form, as well as on the County's Master Plan for Historic Preservation. Historic Preservation Staff at the MNCPPC described the Burton Log House, which dates to circa 1800, as one of the first buildings constructed in the Burtonsville area and a rare, highly representative example of an early log residence associated with the County's agricultural history. Because the Burton Log House property is outside the



boundaries of the subject site, the project is not subject to any regulatory review by the Montgomery County Historic Preservation Commission. Historic Preservation Staff at the MNCPPC suggested, however, placing conditions of approval on the project to ensure sensitive design and siting of the road that would abut the Burton Log House property, and of homes to be built nearby, as well as possible screening. The Staff Report did not carry forward the conditions proposed by Historic Preservation Staff. Technical Staff's view is that such conditions, related to design issues such as building types and facades, would be better addressed at site plan than during review of the proposed development plan amendment. The District Council agrees.

The Applicant's land planner visited the site of the Burton Log House and reported that he was unable to see the actual log cabin because it has been subsumed into a more modern house that was built around the log house. The Burton Log House is on a corner property, so it fronts on two small, residential streets and is surrounded on three sides by single-family homes. The proposed development would place a road and single-family homes along a third side of the historic site, in a relationship that would appear no different from the historic site's current surroundings. In the District Council's view, any impact of the proposed project on this historic resource can be appropriately addressed during site plan review.

### **I. Community Support and Opposition**

Fairland resident Stuart Rochester, Chair of the Fairland Master Plan Citizens' Advisory Committee (the "Fairland CAC"), spoke in support of the proposed development at the Planning Board's hearing, on behalf of the Fairland CAC, and submitted his testimony to the Hearing Examiner. Mr. Rochester described the proposed project as a high-priority Master Plan goal for the last decade. He acknowledged that the plan as now configured is not all that was once envisioned, but called it "a welcome addition to a long-neglected part of the planning area. . . ." and "a major enhancement to improving the demographic and housing makeup of the east side of US 29. . . ." Exs. 58(a), 58. Mr. Rochester stated that the Fairland CAC had worked closely with the Applicant and Technical Staff to resolve a host of issues. He noted the Master Plan's emphasis on increasing the number of single-

family detached homes in Fairland, given the overconcentration of apartments and townhouses in the planning area that resulted from the 1981 master plan. Mr. Rochester considered the concern raised by the Greencastle Lakes Community Association about school crowding inexplicable, in light of the “key and hard-fought-for provision” requiring a school site. See *id.*

The only opposition reflected in the record was that of the Greencastle Lakes Community Association, whose concerns have been discussed in previous sections of this resolution.

### **J. Development Plan Findings**

The District Council finds that the Development Plans submitted with this application satisfy all the requirements for a development plan under Code §59-D-1.61(a)-(e). The three proposed Development Plans are considered together, but it is important to note that the Development Plan for G-813 Part I and G-814 can also satisfy all of the required findings on its own. Each of the required findings is addressed below.

**§59-D-1.61(a): master plan consistency.** The purpose clause for the PD Zone establishes consistency with the master plan as an important factor in applying the zone:

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional district and the area master plans by permitting unified development consistent with densities proposed by master plans. . . . it is intended that the zoning category be utilized to implement the general plan, area master plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.

Code § 59-C-7.11.

In the present case, the Hearing Examiner, the Planning Board and Technical Staff opined that the proposed Development Plans are in substantial compliance with the use and density recommended in the *Fairland Master Plan*, and the District Council agrees. The proposed residential development, shown on the Development Plan for G-813 Part I and G-814, would be substantially consistent with the Master Plan's recommendation for up to 396 dwelling units with a mix of single-family detached homes and attached units appropriate for the area, recognizing the need to increase the proportion of detached homes in the area. The number of units cannot reach the maximum anticipated in the Master Plan on the

property now available while substantially fulfilling the Master Plan's environmental goals, so the number of units proposed represents a balancing of Master Plan priorities. If the potential land sale to the MNCPPC is consummated, the number of units will decrease to a maximum of 248, nearly 40 percent lower than the 396 units anticipated in the Master Plan. This sale would represent a different balancing of the Master Plan's residential and environmental goals, but would still be substantially consistent with those goals, viewed as a whole.

The continued parkland use proposed on the publicly owned parts of the site, shown on Development Plans G-813 Part II and G-813 Part III, would not fulfill the Master Plan's goal of expanding or reconfiguring Gunpowder Golf Course outside the stream valley, but it would retain the existing recreational facilities and satisfy the Master Plan's environmental goals. Because the Applicant and MNCPPC were not able to obtain approval from Prince George's County for the 2004 plan, which included an improved golf course bridging the county line, the proposed Development Plans represent the best possible implementation of the Master Plan's use and density recommendations.

The proposed Development Plans would not conflict with the General Plan, which was amended by the Master Plan; thus, substantial compliance with the Master Plan effectively demonstrates consistency with the General Plan. The preponderance of the evidence, as discussed in Part G above, supports the conclusion that the proposed Development Plans would not conflict with the Growth Policy. The Planning Board approved a preliminary plan of subdivision for a larger residential development on the subject site in 2004, which necessarily included a finding that public facilities (including roads, schools and police and fire protection) were adequate to support the proposed development and would not be adversely affected by it. No substantial, probative evidence was presented in this case sufficient to outweigh that finding, which is still legally valid. On the contrary, the preponderance of the evidence fully supports the Planning Board's APF finding.

Based on the preponderance of the evidence, the District Council concludes that the proposed Development Plan would be in substantial compliance with the use and density indicated in the Master Plan and would not conflict with any other applicable county plan or policy.

**§59-D-1.61(b): purposes of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.**

**1. Purpose Clause**

The purpose clause for the PD Zone contains a number of goals and objectives, all of which are satisfied by these applications. The District Council's findings as to each paragraph of the purpose clause are set forth below.

1<sup>st</sup> paragraph: Master Plan implementation. As discussed under (a) above, the proposed Development Plans would be in substantial compliance with the use and density recommended in the *Fairland Master Plan*. The evidence fully supports a conclusion that the proposed Development Plans would be in substantial compliance with the Master Plan's other recommendations, as well, which are summarized in Part E above. The proposed development would include numerous elements directly responsive to the Master Plan, all of which would be achieved, albeit on a smaller scale, even with the potential land sale to the MNCPPC:

- adding detached units to the housing mix;
- improving the road network by connecting Cedar Tree Drive to Saddle Creek Drive, and possibly to Old Gunpowder Road in Prince George's County if approvals can be obtained;
- providing an 11-acre school site to MCPS at no cost, with grading, forest conservation and stormwater management provided by the Applicant, in a location that would allow many children to walk to school;
- providing common open space for residents of the new community;
- providing trails and pathways to connect the new neighborhoods and nearby existing neighborhoods to one another and to the trail system in Fairland Recreational Park;
- providing MPDUs dispersed throughout the development;
- protecting a significant amount of environmental features such as stream valleys, steep slopes, wooded areas and wetlands.

Second paragraph: social and community interaction, distinctive visual character, balanced mixture of uses. The proposed development would achieve these objectives in several ways. It would reduce the isolation of the existing Saddle Creek neighborhood immediately northwest of the subject property by connecting it to the new development. A network of sidewalks and trails would connect the neighborhoods on and off the subject property to other neighborhoods, the school site, on-site recreational facilities and Fairland Recreational Park. If the Prince George's County part of the project moves forward, the combined project will provide a vehicular connection across the county line, improving access for residents of the new community and the Saddle Creek neighborhood. The proposed development would provide the location for a community school that would be within walking distance for many students and would serve as a focal point, bringing the community together. It would increase recreational options for the Saddle Creek community by providing pedestrian linkages to Fairland Recreational Park. The character of the development would revolve around the large areas of open space created by the forested areas, stream valleys and proximity to Fairland Recreational Park, all of which would give the community a distinct visual character and identity. No commercial uses are proposed, in keeping with the size of the proposed residential development.

Third paragraph: broad range of housing types. The proposed development would contribute to providing a broad range of housing types by increasing the proportion of single-family detached housing available in the Fairland area, and by providing both market rate and MPDU units on site.

Fourth paragraph: trees and grading. The proposed development would result in substantial forest clearing, an impact that would be practically unavoidable with any development at or near the density recommended in the Master Plan. The amount of forest clearing would be lower for the proposed Amended Land Use Plan than on the 2004 plan, down from 99 acres to 74. Moreover, the written binding elements on the Amended Land Use Plan commit the Applicant to convey 23 acres of high-priority forest to the MNCPPC as parkland, free of charge. This dedication is an important environmental benefit, as it would link existing parkland on the east side of the site, represented by Development Plan G-813 Part II, with McKnew Local Park just west of the subject site. This linkage would create a 60-acre area of

contiguous, forested parkland, which is much more valuable as habitat and for aesthetic benefit than isolated pockets of similar land.

In addition to the parkland dedication, the Applicant's preliminary forest conservation plan, Exs. 40(m), (n) and (o) and Ex. 77, provides for forest retention on-site that exceeds both the regulatory reforestation requirements and the applicable conservation threshold. The District Council is persuaded that the proposed Development Plans would take the greatest possible aesthetic advantage of the trees by providing edges along priority forest areas and streams, and views into the forest from a variety of areas. The significant forest preservation on site and in the parkland dedication area would also take aesthetic advantage of the trees by preserving large areas of contiguous forest as an amenity for all nearby residents.

The evidence indicates that while grading will be necessary due to the rolling topography of the site and degraded conditions in some areas, it will be minimized to protect trees, where feasible and appropriate.

Fifth paragraph: open space and physical/aesthetic integration of uses. The Development Plans would preserve substantial amounts of open space as parkland, conveniently located and available to the public as well as site residents. The proposed development would improve access to existing open space in Fairland Recreational Park by creating pedestrian trails linking the park with the nearby Saddle Creek neighborhood, and with the proposed Prince George's County neighborhood if that part of the plan goes forward. Moreover, the flexibility of the PD Zone and the design of the Amended Land Use Plan would result in a high degree of integration, both physical and aesthetic, between the new residences and existing natural and recreational features on the site.

Sixth paragraph: pedestrian networks. The Development Plan includes a system of trails and sidewalks that would tend to reduce reliance on the automobile by allowing residents to walk among the residential and recreational areas, and enabling children who currently are bussed to school from the neighboring Saddle Creek neighborhood, as well as many in the new community, to walk to school.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. Taken as a whole, the Development Plans cover approximately 314 acres and therefore can be considered large scale.

Eighth paragraph, first part: safety, convenience and amenity. The proposed development would provide a maximum of safety, convenience and amenity for residents and neighbors by providing an improved local road network, a site for a neighborhood elementary school, pedestrian connections to Fairland Recreational Park, an expanded McKnew Local Park and, for the new development, on-site recreation facilities.

Eighth paragraph, second part: compatibility. Much of the Saddle Creek development abutting the subject property to the west, near the proposed school site, is classified under the R-200/TDR Zone. The area was developed at higher density using density transfers from up-county, and primarily contains townhouses. Areas north of the subject property and immediately west of the proposed northern neighborhood contain large-lot single-family homes. The proposed development would consist primarily of single-family detached homes, with duplex and townhouse MPDUs, integrated in a well-designed plan intended to create a "move-up" neighborhood, in an area sorely in need of such housing. The proposed residential development would require reclamation of severely degraded land, turning a blighted area into something attractive and useful. The preponderance of the evidence supports a conclusion that the proposed development would not be incompatible with the surrounding area due to traffic impacts or other impacts on public facilities. The Hearing Examiner concludes that both the proposed residential uses and the continued parkland uses would be compatible with the surrounding area, preserving recreational opportunities and a significant amount of environmental resources while improving the housing mix and reclaiming degraded land.

Ninth paragraph: three findings. The purpose clause states that the PD Zone "is in the nature of a special exception," and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone; and

- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

Based on the preponderance of the evidence and for the reasons stated above, the District Council concludes that present application is proper for the comprehensive and systematic development of the County, in compliance with and capable of accomplishing the purposes of the zone, and in substantial compliance with the General Plan and Master Plan.

## **2. Standards and Regulations of the Zone**

The standards and regulations of the PD-2 Zone are summarized below, together with the grounds for the District Council's conclusion that the subject site would continue to satisfy these requirements with the approval of the proposed Development Plans.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, "no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher." The subject property is already classified under the PD Zone, having been recommended in the Master Plan for development at a density of two dwelling units per acre or greater.

Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. These include sufficient gross area to construct 50 or more dwelling units under the density category to be granted; and being recommended for the PD Zone in a master plan but "so uniquely situated that assembly of a minimum gross area to accommodate at least 50 dwelling units is unlikely or undesirable and the development of less than 50 dwelling units is in the public interest." Code § 59-C-7.122(e). The G-813 property has enough land for more than 50 dwelling units, satisfying the first criteria. The G-814 property satisfies the second criteria due to its size, shape and location next to the power lines. Taken as a whole, the proposed Development Plans satisfy the minimum area requirement.

Section 59-C-7.131, Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. A development with 200 to 800 units



is required to have a minimum of 30 percent single-family detached units and 20 percent townhouse and single-family attached units. The development proposed on G-813 property falls within this category but has a mix of 87 percent single-family detached units and 13 percent single-family attached. A development with fewer than 200 units, as proposed for the G-814 property, is required to have a minimum of 35 percent single-family detached units and 35 percent townhouse and single-family attached units. The small number of units proposed within G-814 are all single-family detached homes, in keeping with nearby homes on the other side of the power lines.

The Applicant requests waivers of the above unit mix requirements pursuant to Code § 59-C-7.131, note 1, which authorizes the District Council to waive the unit mix requirements if it finds that “a proposed development . . . achieves goals, policies or recommendations stated in an approved and adopted master or sector plan.” The Department of Housing and Community Affairs (“DHCA”) objected to the waiver requested for the G-813 portion of the development, arguing that the proposed development should include market-rate townhouses.

Environmental Planning Staff observed that a higher density configuration with more attached units would save more priority forests. They nonetheless supported the waiver, because the proposed development would achieve other Master Plan environmental goals such as preserving high-priority upland forest and continuing the restoration of degraded areas.

In light of the Master Plan's emphasis on increasing the number of detached homes in the Fairland area, the District Council finds that the requested waivers should be granted.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted but not required under the PD Zone. Parameters established for commercial uses are not applicable to the subject application, which does not propose any commercial uses.

Section 59-C-7.133, Other Uses. Noncommercial community recreational facilities for the use of residents, such as the tot lots, swimming pool, community building and parkland shown on the Amended Land Use Plan, are permitted in the PD Zone.

Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§ 59-C-7.14(b)):

The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, . . . the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

The present application seeks the low-density category of two dwelling units per acre, in keeping with the recommendations of the Master Plan. The maximum number of units permitted under the written binding elements represents an overall density of approximately two dwelling units per acre, including MPDUs (365 units/183 acres). The District Council concludes, based on the evidence of record, that this low density level is appropriate for the subject property in light of the significant environmental constraints on the site, the recommendations of the Master Plan and the density of existing development in the surrounding area.

Section 59-C-7.15, Compatibility. As discussed in Part J.1. above, the District Council finds that the proposed development would be compatible with existing development in the surrounding area. Moreover, the written binding elements on the Amended Land Use Plan show that the development would satisfy the setback specifications set forth in Section 59-C-7.15, which prohibit any building other than a one-family detached residence within 100 feet of an adjoining one-family detached zone. The Amended Land Use Plan does not include a binding element that responds to the specification in the same section that no building may be constructed to a height greater than its distance from such adjoining land. However, the submitted Land Planning Report states that the development would comply with this requirement. See Ex. 51(b) at 19. The Amended Land Use Plan shows that only a small number of residential lots would be adjacent to land that is recommended for single-family detached zoning, and all of the buildings on those lots would be single-family dwellings. Under these circumstances, it is reasonable to expect that the building heights would comply with the Zoning Ordinance and that the Planning Board would ensure such compliance at site plan review.

Section 59-C-7.16, Green Area. The PD-2 Zone requires a minimum of 30 percent green area. A written binding element on the Amended Land Use Plan commits the Applicant to providing at least 45 percent green space, defined as gross tract area less buildings, roads and driveways.

Section 59-C-7.17, Dedication of Land for Public Use. The Land Use Plan clearly identifies the portions of the subject property to be dedicated to public use: the school site, the parkland dedication and property needed for roads.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. The Amended Land Use Plan shows preliminary parking counts considerably higher than Article 59-E requires.

**§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems.** The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient. The extension of Cedar Tree Drive would improve the local road network, benefiting both existing and new residents of the area. Likewise, the network of trails and sidewalks would provide valuable pedestrian connections for both existing and new residents.

**§59-D-1.61(d): preservation of natural features.** As discussed in Part F above, the proposed Development Plans would preserve a significant amount of the natural vegetation and other natural features of the site. The Applicant has committed to convey 23 acres of high-priority forest to MNCPPC at no charge, as parkland linking existing publicly-owned forest areas. Its preliminary forest conservation plan, which has been approved by the Planning Board, provides for forest retention that exceeds all relevant regulatory requirements. Uncontested evidence on stormwater management indicates that the proposed development would comply with applicable water protection requirements.

The proposed Development Plans would have significant environmental benefits compared to the 2004 plan. These include preserving greater amounts of parkland, high-priority forest, stream buffers and wetlands. The proposed residential development would also provide the significant benefit of stabilizing

and reclaiming severely degraded land, replacing it with useful and attractive open space and recreational amenities. The District Council considers this finding to be satisfied.

**§59-D-1.61(e): common area maintenance.** A homeowners' association declaration of covenants, conditions and restrictions that has been submitted in draft form adequately and sufficiently demonstrates the intended ownership and perpetual maintenance of common areas.

#### **K. Public Interest**

The District Council further concludes that the proposed zoning bears sufficient relationship to the public interest to justify its approval. When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities. As discussed above, the District Council finds that the proposed Development Plans would be in substantial compliance with the *Fairland Master Plan*. The preponderance of the evidence also establishes that the proposed Development Plans would be adequately supported by and would have no material adverse impacts on public facilities. To the contrary, the proposed residential development would include a park dedication and school dedication that carry significant public benefits. If the County builds a new elementary school on the site provided, the net result will be a substantial benefit to school conditions at the elementary level, while creating a focal point for neighborhood activity and community involvement.

In addition to the added parkland and forest retained on the subject site, the public would benefit from the environmental restoration and reclamation the private developers would perform on land that is currently bare and causing sedimentation problems.

As the Opposition pointed out, some of the natural features on the subject property would be adversely affected by the proposed development – trees would be cut down, some stream buffers cleared and potentially some isolated wetlands filled. However, for the reasons stated in Part F above, the District Council is persuaded that the environmental costs associated with the proposed development are no greater than necessary to allow the Master Plan's housing goals for the area to be achieved, at least in part.

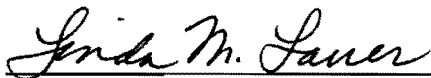
For these reasons and because to approve the instant application would aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

### ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Development Plan Amendment Application No. 09-1, seeking to amend the existing Development Plan approved in conjunction with Zoning Applications G-813 and G-814 to create (1) Development Plan G-813 and G-814, (2) Development Plan G-813 Part II and (3) Development Plan G-813 Part III, is hereby **granted** in the amount requested and the three proposed Development Plans submitted therewith approved, subject to the specifications of the Amended Land Use Plan, Exhibit 82(a), which forms their central component, as well as the Phasing Plan, Exhibit 82(b), and the depiction of the three Development Plans on Exhibits 25 and 39(f), provided, that within ten days of receipt of the District Council's approval resolution, the Applicant must submit a reproducible original and three copies of the approved Amended Land Use Plan and Phasing Plan, Exhibits 82(a) and (b), for certification in accordance with § 59-D-1.64 of the Zoning Ordinance.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council